

Minneapolis Planning Department
350 South Fifth Street, Room 210
Minneapolis, MN 55415-1385
(612) 673-2597 Phone
(612) 673-2728 Fax
(612) 673-2157 TDD

MEMORANDUM

DATE: November 13, 2003

TO: Council Member Gary Schiff, Chair, Zoning & Planning Committee and
Members of the Committee

FROM: Hilary Watson, Senior City Planner

SUBJECT: Appeal of the decision of the City Planning Commission by J. Sven
Gustafson on behalf of Aaron and Andrea Switz

J. Sven Gustafson, on behalf of Aaron and Andrea Switz, has filed an appeal of the decision of the City Planning Commission. The appeal is associated with the decision of the City Planning Commission to deny the conditional use permit to increase the height of the proposed home from the permitted 2.5 stories to 3 stories located in the Shoreland Overlay District. The minutes from the October 7, 2003 City Planning Commission meeting are attached.

The appellant has stated that the decision is being appealed because without any conditional use permit a taller home with more square footage over the second floor could be built. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the October 7, 2003 City Planning Commission meeting, seven of the Planning Commission members were present. All seven Planning Commissioners voted to deny the conditional use permit to increase the height of the proposed home from the permitted 2.5 stories to 3 stories located in the Shoreland Overlay District.

Minneapolis City Planning Department Report

Conditional Use Permit
BZZ-1381

Date: October 7, 2003

Applicant: Aaron and Andrea Switz

Address of Property: 3630 Zenith Avenue South

Date Application Deemed Complete: September 11, 2003

End of 60 Day Decision Period: November 10, 2003

Contact Person and Phone: J. Sven Gustafson, Stonewood Design Build LLC, (952) 471-0584

Planning Staff and Phone: Hilary Watson, (612) 673-2639

Ward: 13 **Neighborhood Organization:** Linden Hills Community Council

Existing Zoning: R1

Proposed Use: Single-family dwelling

Concurrent Review: None

Background: The applicants are proposing to construct a new single-family dwelling on the property located at 3630 Zenith Avenue South.

The Minneapolis Zoning Code limits the height of single-family dwellings in the R1 zoning district to two-and-a-half stories or 35 feet, whichever is less. The proposed height of the applicant's home, when measured to the midpoint of the roof, is 34.5 feet. The overall height of the applicant's home is 37 feet.

The Zoning Administrator has interpreted that where building height is limited to two-and-a-half stories that the definition of half-story must be referenced. In determining whether a half-story exists, both parts of the two-part test must be met. First, the half-story must be under a gable or hip roof. Second, the habitable floor area of the half-story may not exceed fifty percent of the floor area below it. For purposes of this calculation, only that portion of the second floor located directly below the half-story as measured between the exterior walls of the half-story is included. Based on this interpretation the proposed home is considered to be three stories.

Typically, to increase the height of a single-family dwelling to allow a third-story an applicant would go through the variance process. However, in this situation the subject property is located in the SH Shoreland Overlay District as it is located within 1,000 feet of the ordinary highwater mark of Lake Calhoun. Therefore a conditional use permit is needed to increase the height of a three-story single-family home.

CONDITIONAL USE PERMIT

Findings as Required by the Minneapolis Zoning Code for the Conditional Use Permit

The Minneapolis City Planning Department has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

Staff does not believe that the third-story of the applicant's home would be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

2. Will be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

Staff believes that the construction of the proposed home would be injurious to the use and enjoyment of other property in the area and would impede on possible future development. This property is located in an existing single-family residential neighborhood. There is a wide variety of housing styles in the neighborhood including Mediterranean (please see the attached photos of the different homes in the neighborhood). However, none of the homes in the neighborhood exceed two and a half stories in height. Staff believes that the scale of the applicant's home is out of character with the other homes in the neighborhood. Allowing one property owner to increase the height of their house could set a precedent in the neighborhood.

3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.

The applicant will be working closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development to ensure that all procedures are followed in order to comply with city and other applicable requirements.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

The construction of a new single-family home should not have an effect on the traffic congestion in the area. A three-car garage is being incorporated into the design of the new home.

5. Is not consistent with the applicable policies of the comprehensive plan.

This site is located in a low-density residential area (see map 9.9).

In the City Form chapter found in *The Minneapolis Plan*, Policy 9.5 states that "Minneapolis will support the development of residential dwellings of appropriate form and density." Policy 9.8 states that "Minneapolis will maintain and strengthen the character of the city's various residential areas."

There is a wide variety of housing styles in the neighborhood including Mediterranean (please see the attached photos of the different homes in the neighborhood). However, none of the homes in the neighborhood exceed two and a half stories in height. Staff believes that the scale of the applicant's home is out of character with the other homes in the neighborhood.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of the conditional use permits, variances, site plan review and vacation.

With the approval of the conditional use permit this development will meet the requirements of the R1 District and, as discussed below, the SH Shoreland Overlay District.

SHORELAND OVERLAY DISTRICT STANDARDS

Evaluation Criteria as Required by the Minneapolis Zoning Code for the Conditional Use Permit for the Addition in the Shoreland Overlay District

1. The prevention of soil erosion or other possible pollution of public waters, both during and after construction.

The applicants have indicated that appropriate and required soil erosion control methods will be followed while in the construction phase of this development.

2. Limiting the visibility of structures and other development from protected waters.

The site is currently vacant. As shown in the attached photos, there are clear views of the site from Lake Calhoun therefore allowing clear views of the third story from the lakeshore. This area of Lake Calhoun is fully developed with residential structures of similar heights, so the construction of a three-story home could have appreciable negative impact on the visual character of the lakeshore (please see the attached photos).

3. The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.

This provision is not applicable to this development.

SHORELAND OVERLAY DISTRICT STANDARDS

Evaluation Criteria as Required by the Minneapolis Zoning Code for the Conditional Use Permit when Determining Maximum Height for Structures in the Shoreland Overlay District

(1) Access to light and air of surrounding properties.

The proposed height of the applicant's home, when measured to the midpoint of the roof, is 34.5 feet. The overall height of the applicant's home is 37 feet. The location of the proposed third-story of the home is located in the middle portion of the home and directly in line with the two adjacent homes (please see the attached site plan). In terms of light and air the most affected property would be the home located to the south of the property. Although the required setbacks are being met the existing home to the south would be located 15 feet away from a three-story home (please see the attached "left side" elevation). Staff believes that constructing a three-story home 15 feet away from the adjacent property will create a "canyon effect" between the two homes, thus reducing light and air to the adjacent property.

(2) Shadowing of residential properties or significant public spaces.

The applicants did not submit a shadow study for review as part of this application. In terms of shadowing the most affected residential properties would be the homes located to the west and

north of the property. The west and north perimeters of the property are heavily wooded. Please note that the applicants have not indicated how much of the vegetation will be removed as a result of the construction. In addition, the three-story portion of the home is located approximately 35 feet from the north property line. Staff believes that shadowing, if any, would be minimal on the adjacent residential properties. Also, staff does not believe that the public space located across Zenith Avenue South from the site will be shadowed.

(3) The scale and character of surrounding uses.

This property is located in an existing single-family residential neighborhood. The scale of the homes in the neighborhood are of similar size to one another even though there is a wide variety of housing styles in the neighborhood including Mediterranean (please see the attached photos of the different homes in the neighborhood). None of the homes in the neighborhood exceed two and a half stories in height. Staff believes that the scale of the applicant's home is out of character with the other homes in the neighborhood.

(4) Preservation of views of landmark buildings, significant open spaces or water bodies.

Views of landmark buildings, significant open spaces and water bodies may be impacted by this development. The homes located along Abbott Avenue South are located at a higher elevation than the homes located along Zenith Avenue South. Because of this, constructing a three-story home on Zenith Avenue South may diminish the views of Lake Calhoun from those homes on Abbott Avenue South.

RECOMMENDATION OF THE CITY PLANNING DEPARTMENT:

The City Planning Department recommends that the City Planning Commission **deny** the Conditional Use Permit to increase the height of the home located at 3630 Zenith Avenue South from the permitted 2.5 stories to 3 stories which is located in the Shoreland Overlay District.

**Excerpt from the
Tuesday, October 7, 2003
CITY PLANNING COMMISSION
MINUTES
317 City Hall
Minneapolis, MN 55415
4:30 p.m.**

17. Aaron and Andrea Switz (BZZ-1381, Ward 13)

3630 Zenith Avenue South (Hilary Watson)

A. Conditional Use Permit

Application by Aaron and Andrea Switz for a conditional use permit at 3630 Zenith Avenue South.

Motion: The City Planning Commission **denied** the Conditional Use Permit to increase the height of the home located at 3630 Zenith Avenue South from the permitted 2.5 stories to 3 stories which is located in the Shoreland Overlay District.

Staff Jason Wittenberg: this is an application filed by Aaron and Andrea Switz for a conditional use permit to increase the maximum permitted height of a single-family dwelling in the Shoreland Overlay district from 2 ½ to 3 stories. The property is located at 3630 Zenith Avenue South, near the southwest corner of Lake Calhoun in the Linden Hills neighborhood. The proposed dwelling would comply with all setbacks including meeting the line between the two adjacent dwellings. As determined by this survey, the home to the south is 9 ½ feet off of the applicant's lot line and the home to the north is 14 feet from the north lot line. The height limitation in the Shoreland and elsewhere for single-family dwellings is 2 ½ stories or 35 feet, whichever is less. According to Ms. Watson's report, the height of the proposed dwelling would be 34 ½ feet to the midpoint of the roof, but clearly there is a 3rd story which violates the 2 ½ rule of the zoning code. When seeking a conditional use permit to increase height, in addition to the standard conditional use permit findings, the applicant must address four additional criteria: access to light and air of surrounding properties; shadowing of residential properties; the scale and character of surrounding uses; and preservation of views of landmark buildings, significant open spaces or water bodies. Ms. Watson's report states that construction of the home would be injurious to the use and enjoyment of other properties in the vicinity and it likely would impede light and air for adjacent properties, would be out of scale with other homes in the vicinity and would potentially diminish views toward Lake Calhoun. The applicant argues that the housing code inadvertently discriminates against this particular architectural style and states that the proposed home would have less space on the 3rd floor than would a 2 ½ story home. My understanding in terms of neighborhood input is that Ms. Watson did receive a number of phone calls about the proposal and that the Linden Hills Neighborhood Council is discussing this matter as we speak. Staff is recommending denial of the conditional use permit.

Aaron Switz (3630 Zenith Avenue South): Spoke for the application.

Kathy Alexander (did design work on house): Spoke for the application and asserted code is written towards a gable style of roof and spoke to the application going through three rounds of staff review.

Sven Gustavson (Stonewood Design Build, the Switz' builder): Spoke to interpretation of codes as it pertains to the style that was chosen. Mr. Gustavson referred to another home with nearly the same elevation on Calhoun Boulevard.

Kathy Alexander spoke to precedent she said was set at 3722 and 3724 Calhoun Boulevard.

Gerald Carroll (3610 Zenith): Mr. Carroll stated he was attending with his next door neighbor, Morris Filister, who lives at 3620 Zenith. Mr. Carroll stated that staff had done an excellent job of pointing out how the application violates the zoning code. He also asserted that the property violates Shoreland district requirements. He stated he was concerned about the precedent that would be set by this property being built.

Morris Filister (3620 Zenith Avenue South) Spoke against.

[tape unclear].

Commissioner LaShomb moved staff recommendation (Commissioner Johnson seconded).

The motion carried 7-0.